IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 27TH FEBRUARY 2007 / 8TH PHALGUNA 1928

WP(C).No. 22851 of 2006(U)

PETITIONER:

JACOB. K.T., PEON,
ST.SEBASTIAN HIGH SCHOOL,
POTTENKAD P.O., IDUKKI DISTRICT.

BY ADV. SRI.K.G.ANIL BABU

RESPONDENTS:
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1. THE STATE OF KERALA, REPRESENTED BY
THE SECRETARY TO GOVERNMENT, GENERAL
EDUCATION (N) DEPARTMENT, THIRUVANANTHAPURAM.

2. THE DEPUTY DIRECTOR (EDUCATION)
IDUKKI AT THODUPUZHA.

3. THE DISTRICT EDUCATIONAL OFFICER,
THODUPUZHA.

4. THE MANAGER, ST.SEBASTIAN'S
HIGH SCHOOL, POTTANKAD, IDUKKI,
(CORPORATE EDUCATIONAL AGENCY,
DIOCESE OF IDUKKI.).

BY ADV. SRI.P.CHANDY JOSEPH
GOVERNMENT PLEADER SRI.P.A.SALIM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C).22851/2006

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE STAFF FIXATION ORDER NO.132-13645/69 DATED 15.7.1969.

EXT.P2: COPY OF THE APPOINTMENT ORDER DATED 2.6.1969 OF THE MANAGER ALONG WITH THE ENDORSEMENT OF APPROVAL OF THE D.E.O.KANJIRAPPALLY.

EXT.P3: COPY OF THE STAFF FIXATION ORDER FOR THE ACADEMIC YEAR 70-71 ISSUED BY THE D.E.O.KANJIRAPPALLY DATED 13.8.70.

EXT.P4: COPY OF THE LETTER NO.C4/10462/05 DATED 14.10.05.

EXT.P5: COPY OF THE LETTER SUBMITTED BY THE HEAD MASTER OF THE SCHOOL TO THE 3RD RESPONDENT DATED 24.10.05 ALONG WITH ENDORSEMENT NO.N.DIS 8138/05 B2/DT. 28.10.05.

EXT.P6: COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DATED 18.10.2005.

EXT.P7: COPY OF THE REPRESENTATION SUBMITTED BY THE SECRETARY, CORPORATE EDUCATION AGENCY, DIOCESE OF IDUKKI DATED 7.1.2006.

EXT.P8: COPY OF THE GOVERNMENT ORDER NO.6407/N2/06/G.EDN.DATED 27.7.2006 ISSUED BY THE 1ST RESPONDENT.

/TRUE COPY/

K. M. JOSEPH, J.

W.P.C. NO. 22851 OF 2006 U

Dated this the 21st February, 2007

REFERENCE ORDER

The question raised in the Writ Petition is whether the petitioner who was appointed as a Peon in the School run by fourth respondent, was entitled to continue till he completed sixty years of age, under Rule 60(b) of Part I of KSR. The matter stands decided against the petitioner by the Authority on the ground that the first spell of appointment of petitioner from 15.7.1969 to 30.4.1970 was an appointment for a limited period and similar to that of temporary hand under Rule 9(a) of the KS & SSR. It is found that the petitioner has continued against a regular vacancy as Peon only from 4.5.1970 and, therefore, he is not entitled to continue upto sixty years. Going by Ext.P2 order of appointment dated 2.6.1969, petitioner was appointed as Peon under the Educational Agency from 2.6.1969 till the vacancy exists. The appointment was, however, approved only till the end of the School year, 1969 - 1970. Thereafter, he was

appointed as Peon from 4.5.1970 till the vacancy exists. Petitioner has a case that there is no break in service and the Ist of May, 1970 was a National public holiday and 2nd and 3rd were Saturday and Sunday in May, 1970. Saturday was not a working day, it is stated. At any rate, petitioner was in service on 7.4.1970, it is contended. I would think that it may not be appropriate to characterise Ext.P2 appointment as an appointment in the nature of an appointment under Rule 9(a) of the KS & SSR. The appointment was indeed without any time limit. No doubt, the approval was limited to the end of the School year 1969 - 1970. However, learned Government Pleader relied on the decision of this Court in Rabecca v. State of Kerala (1994 (1) KLT 552). Therein, the learned Single Judge took the view that not only a last grade servant should be in service on 7.4.1970, but he should be in continuous service on and after 7th April, 1970. It may not be possible for me to agree with the said view. There is no specific requirement in the Rule that there should be continuous service as such. In such

circumstances, I feel that the matter should receive attention of a Division Bench. Accordingly, the Writ Petition is adjourned to be heard by a Division Bench.

Place the case before The Honourable the Acting Chief Justice for orders on posting.

K. M. JOSEPH, JUDGE

kbk.